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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,383	11/18/2003	Debra Kay Frider	33778/US	4361

7590 12/17/2004

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EXAMINER

LEWIS, RALPH A

ART UNIT PAPER NUMBER

3732

DATE MAILED: 12/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/716,383	Applicant(s) FRIDER ET AL.	
	Examiner Ralph A. Lewis	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-7 and 9-21 is/are rejected.
- 7) ☒ Claim(s) 2 and 8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>02/24/2004</u> . | 6) <input type="checkbox"/> Other: ____.  |

### Objection to the Drawings

The drawings are objected to under 37 CFR 1.84 (i) and (p) as being informal. The lines, numbers and letters lack uniformity and are fuzzy lacking sharp definition. No new matter should be entered. Formal replacement drawings are required.

### Rejections based on Prior Art

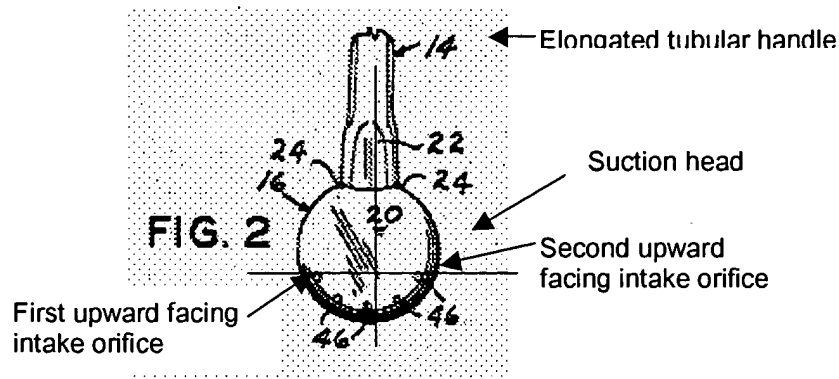
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-7, 9-12 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Warriner (US 3,102,338).

It is noted that the orifices 46 are “upward facing” when the mirror is used to look at the top of the patient’s lower jaw teeth.

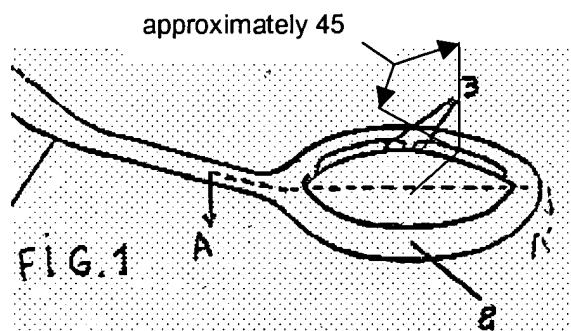
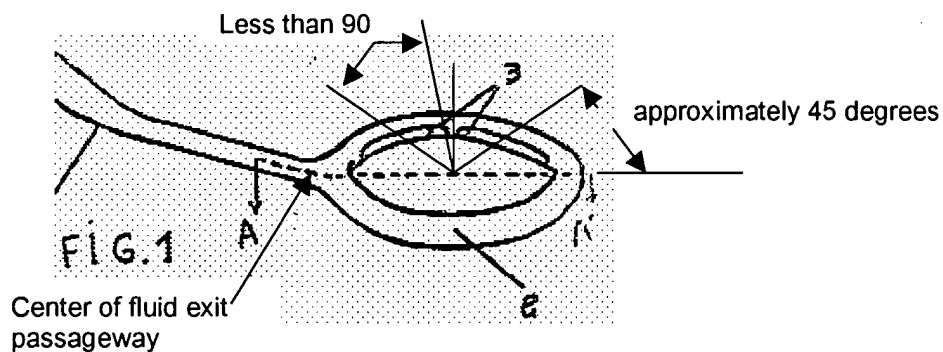


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In regard to claim 3, the middle orifice 46 meets the "forward facing" limitation since the direction is given no reasonable orientation to the other elements or directions and is thus broadly interpreted as corresponding to the "upward direction." In regard to claim 21, the claimed use is inherent in the general operation of the Warriner device.

Claims 13 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Bagur et al (FR 2642298)

Bagur et al disclose a dental evacuation tooth having a suction head 2 with mirror 1 and first and second intake orifices 3 in communication with a fluid exit pathway 9. The Bagur et al device further includes a tubular handle 5 connected with exit fluid pathway 9. The orifices 3 as illustrated both fall within the angular orientations required by the claims as demonstrated below.



The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bagur et al (FR 2642298)

In regard to claims 13-20, merely varying the particular angles illustrated above in Bagur et al to within the particular ranges claimed would have been obvious to the ordinarily skilled artisan in the construction of the Baguer et al device. In regard to claim 21, the use of the Bagur et al device in a conventional manner between a patient's cheek and gums/teeth so that one could view the side of the teeth and gums with the mirror would have been obvious to one of ordinary skill in the art.

#### **Prior Art**

Applicant's information disclosure statement of February 24, 2004 has been considered and an initialed copy enclosed herewith.

Warriner (US 3,092,910), Lussier (US 3,631,598), Berlin (US 4,925,391), Berlin (US Des 320,075), Lake (US 5,951,284), Abee (DE 103 40 278), Gustrand (EP 0314657) and Devisme (FR 2620930) are made of record.


**Allowable Subject Matter**

Claims 2 and 8 are objected to and would be allowable if rewritten in independednet form to include all of the limitations of the claims from which they depend.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication should be directed to **Ralph Lewis** at telephone number **(571) 272-4712**. Fax (703) 872-9306. The examiner works a compressed work schedule and is unavailable every other Friday. The examiner's supervisor, Kevin Shaver, can be reached at (571) 272-4720.

R.Lewis  
December 12, 2004



Ralph A. Lewis  
Primary Examiner  
Au3732